

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA

UNITED STATES OF AMERICA,)
)
Plaintiff,) 8:09CR164
)
vs.) ORDER
)
FRANK MOUIVO-MATSIMA,)
)
Defendant.)

This matter is before the court on the motion to continue by defendant Frank Mouivo-Matsima (Mouivo-Matsima) (Filing No. 29). Mouivo-Matsima seeks a continuance of the trial of this matter which is scheduled for August 31, 2009.

However, the motion does not comply with NECrimR 12.1 which provides, in part:

Unless excused by the court in individual cases, a motion to continue the trial setting of a criminal case must state facts demonstrating that the ends of justice served by a continuance outweigh the best interest of the public and the defendant in a speedy trial, (see 18 U.S.C. §3161(h)(8)), or that for some other reason, the continuance will not violate the Speedy Trial Act. Unless excused by the court in individual cases, if the defendant is a moving party the motion shall be accompanied by **the defendant's affidavit** or declaration (see 28 U.S.C. § 1746) stating that defendant:

- (1) Was advised by counsel of the reasons for seeking a continuance;
- (2) Understands that the time sought by the extension may be excluded from any calculation of time under the Speedy Trial Act, 18 U.S.C. § 3161 *et seq.*; and
- (3) With this understanding and knowledge, agrees to the filing of the motion.

The motion is not accompanied by the defendant's affidavit or declaration stating the requirements of (1) ✓, (2) ✓, or (3) ✓ above.

Accordingly, the motion (Filing No. 29) is held in abeyance **until August 26, 2009**, and if the deficiency noted above is not corrected, the motion will be denied.

IT IS SO ORDERED.

DATED this 21st day of August, 2009.

BY THE COURT:

s/Thomas D. Thalken
United States Magistrate Judge